

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY L. NUTILE,

Defendant.

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8:03CR155

MEMORANDUM AND ORDER

This matter is before the court for initial review of the defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion) (Filing No. 48) and his Motion for Leave to Appeal In Forma Pauperis (Filing No. 50).

Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

Defendant pleaded guilty to Count I of the Indictment charging him with being a Felon in Possession of Ammunition in violation of 18 U.S.C. § 922 (g)(1), and the court sentenced him to 57 months in the custody of the Bureau of Prisons followed by three

years of supervised release. Defendant did not file a direct appeal challenging his conviction or sentence.

In his § 2255 motion defendant alleges that he was denied effective assistance of counsel in that “counsel failed to propound proper and adequate legal action in securing concurrent time.” The court will order the United States to answer the defendant's claim. In addition to any other issues raised in the answer, the United States shall address whether this claim is barred by procedural default, waiver, or untimeliness.

IT IS ORDERED:

1. That upon initial review, the court finds and concludes that summary dismissal of the defendant's § 2255 motion (Filing No. 48) is not appropriate.

2. That defendant's Motion to Proceed In Forma Pauperis (Filing No. 50) is granted.

3. That by May 22, 2006, the United States shall answer or otherwise respond to the defendant's § 2255 motion, and shall file an accompanying brief.

4. That by June 22, 2006, the defendant may file a reply brief.

DATED this 24th day of April, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge